

**PARAMOUNT LIMESTONE SDN. BHD. v.
NADER MINERALS DEVELOPMENT SDN. BHD.****[O.C.J. (Chang Min Tat F.J.)
October 12 and November 19, 1977]****[Ipoh — Originating Motion No. 28 of 1977]**

Land Law — Caveat — Caveat registered against land — Application to remove — Non-registrable interest — Not protected by caveat — National Land Code, ss. 323(1), 327(2), 329(2) — Stamp Ordinance, 1949, ss. 51 & 52.

Stamp Duty — Unstamped document — Reliance on — Inadmissible in evidence — Stamp Ordinance, 1949, ss. 51 & 52.

Pursuant to an agreement dated October 9, 1975, the applicants agreed to allow the respondents to extract rock materials from their quarry for an initial term of six months from the date of the agreement. Certain provisions were made for payment, one of which stated that the contractor was to pay a deposit of \$1,500 to the applicants, which deposit was refundable at the end of the term. The agreement also provided for cancellation by the applicants if 'the contractor (had) failed to pay the amount of any monies which it (was) by the terms of the agreement bound to pay...' On the execution of the agreement, the respondents paid the deposit of \$1,500 by \$300 cash and a cheque for \$1,200. The cheque was dishonoured, and despite several demands by the applicants, the respondents did not make good the payment. On March 1, 1976, the applicants terminated the agreement. The respondents subsequently lodged a caveat against the land. This caveat lapsed on June 18, 1977 but before that, while it was so registered, the respondents lodged a second caveat. The applicants sought to remove the caveat and to preclude the respondents from registering further caveats. The respondents sought to admit in evidence an unstamped document purporting to be an agreement by the applicants to grant them a lease.

Held, allowing the caveat to be removed: (1) the unstamped document was not admissible in evidence under section 52 of the Stamp Ordinance;

(2) the right of the respondents sprang from the agreement of October 9, 1975, which had not been extended. The respondents could have no title or registrable interest to the land under such an expired agreement and therefore could not be protected by any caveat.

ORIGINATING MOTION.

R.D. Rajasingam for the applicants.

A. Leelamoney for the respondents.

Cur. Adv. Vult.

Chang Min Tat F.J.: This application by Originating Motion prays for the removal of the caveat now registered against the land belonging to the applicants and for a further order that the respondents be precluded from registering further caveats, and for consequential orders and reliefs.

The relationship between the parties is embodied in an agreement in writing made on October 9, 1975. It is necessary to refer to the relevant terms of this agreement. The basic term was for the employment, in consideration of the sum of one dollar, by the applicants of the respondents for the extraction of rock materials from the land which is described as a quarry for an initial term of six months from the date of the agreement. The minimum quantity of rock was specified at 200 tons per day, but this condition was relaxed for the first 45 days. The extraction was to be at the cost of the contractor, who however had to pay the quarry owners tribute at the rate of forty cents per ton of rock quarried. The contractor was

also under an obligation to pay \$500 per month for the rental of the machinery at the quarry. A deposit of \$1,500 was to be made by the contractor, which deposit was refundable at the end of the term. The term is renewable "for further periods upon the expiration of the initial period of six months on terms and conditions (to) be agreed upon by the parties. Provided always that the contractor shall not have committed a breach of the terms and conditions of the agreement."

By clause 13, it is provided that the agreement shall be liable to cancellation by the owner by giving written notice to the contractor if it is satisfied:

- (i) that the contractor has failed to pay the amount of any monies which it is by the terms of the agreement bound to pay for a period of 14 days from the date upon which such payment first became due; or
- (ii) that the contractor has by its default rendered the quarry site liable to forfeiture by the State Government; or
- (iii) that the contractor has committed a breach of any one or more of the several duties and obligations imposed upon it by the provisions of the agreement.

On the execution of the agreement, the respondents paid the deposit of \$1,500 by \$300 cash and a cheque for \$1,200. The cheque was however dishonoured on presentation. A first demand to make good the \$1,200 was made by solicitors' letter on October 13, 1975, that is 4 days after the signing of the agreement. Other demands were made subsequently, but none evoked any specific response. It would not appear that at any time any payment had been made towards meeting this obligation to pay the deposit.

In the meantime, it would appear that negotiations were commenced between the applicants and the respondents and a certain Japanese gentleman for the formation of a joint-company to exploit the resources of the quarry. The respondents referred to such negotiations but they all came to nought and the relevance would however appear to be that the negotiations were started by the applicants and the respondents were pulled in to assist them in the formation of a joint-venture company. Mr. Packianathan, the managing director of the respondent company, alleged that he had done work in connection with the proposed formation and had also paid a sum of \$10,000 to Miss Patricia Loh Swee Yoong a director of the applicant company by way of disbursements.

On March 1, 1976, the applicants terminated the agreement, alleging these several breaches: (a) failure to make the payments due despite repeated demands; (b) failure to make good the damages caused by fire on January 30, 1976 to certain buildings on the land; and (c) failure to replace certain missing parts of the machinery.

This notice brought a reply from the respondents. It reads:

"2nd March, 1976.

M/s. Syarikat Paramount Limestone Sdn. Bhd.,
No. 8, Ceylon Avenue,
Off Jalan Abdul Jalil, Ipoh.
Sirs,

Re: Agreement dated 9.10.1975

We refer to your letter dated March 1, 1975 and wish to inform you that with regards to paragraph 2(b) and (c) please take-up the matter with London & Pacific Insurance Co. Bhd., with whom we have an insurance cover valid till November 13, 1976.

As regards paragraph 2(a) our contention is that no further payment will be made to you till we know exactly what you are up to.

We wish to point out that we do not accept paragraph 3 unless all monies are refunded and payments made for our services. Please note that we will not hesitate to take-up civil proceedings if you enter into any agreement(s) with any third parties without our consent.

Yours faithfully,
Sgd. ?

NADER MINERALS DEVELOPMENT
SDN. BERHAD."

The reply was not very specific, but the respondents had made a claim for moneys advanced and services rendered.

Before this stage was reached however, the respondents directed a letter dated February 6, 1976 to the applicants in the following terms:

"6th February, 1976.

Messrs. Syarikat Paramount Limestone Sdn. Bhd.,
No. 8, Ceylon Avenue,
Off Jalan Abdul Jalil, Ipoh.

Sirs,

Re: Agreement dated 9.10.1975

We refer to the above Agreement and wish to inform you that we are not prepared to advance any further monies to you or your agents unless as provided under Clause 2 of the Agreement referred, you are prepared to extend this Agreement to a period of 10 years (in two 5 year options) on terms our Japanese partner (whom you have imposed on us) have offered.

If you are not prepared to extend the Agreement please refund all cash advances taken from us and then examine ways and means to terminate the Agreement on terms acceptable to both parties.

We take this opportunity to draw your attention to our letter of October 23, 1975.

Yours faithfully,
Sgd. ?

NADER MINERALS DEVELOPMENT
SDN. BERHAD."

Whether the respondents had any right to compel the applicants to accept the terms which they and their Japanese partner offered against the provision in clause 2 that the terms and conditions of any renewal were to be negotiated is besides the point but for a reason that will appear subsequently, it is to be noted that there was no claim in the letter to the grant or any agreement to grant to the respondents any lease for 10 years or any other period or at all.

I now come to the bone of contention, the caveats.

The respondents lodged a first caveat against the land for the reason that first, there was a contract made on October 9, 1975 which was renewable, second, the respondents had expended more than \$50,000 in

A developing the land since October 9, 1975 and if the applicants parted with the land, they would not have any assets to pay these expenses and thirdly the respondents wished to protect their rights in the agreement and other rights.

B This caveat lapsed on June 18, 1977, but before that, that is, while it was so registered, the respondents lodged a second caveat. The grounds advanced were the same agreement, a civil suit (No. 210/77) instituted by the respondents in the High Court at Ipoh for an order that the respondents be given the right to hold over the title and the application to court to extend the first caveat until the hearing of the said civil suit.

C The application to court for extension of the first caveat was withdrawn by the respondents on August 22, 1977 but I am advised that this caveat is still registered against the land.

D This motion first came up before my brother Datuk Eusoffe Abdoolcader J. At that first hearing, Mrs. Mahendran who appeared for the respondents applied for an adjournment to produce a lease of the land alleged to be granted by the applicants to the respondents which would, she said, cut short a great deal of arguments. The motion was adjourned.

E By the time it came up before me, Mr. Packianathan had filed a further affidavit alleging *inter alia*, a registrable interest in the land and though he did not spell out the exact nature of this interest, it must be the so-called lease, a photostat copy of which he annexed to his affidavit as an exhibit. Curiously enough, it was stapled to an undertaking by the respondents to pay commission to one Nadarajah Sitham-paranatha Wigneswaran for valuable services rendered by introducing the quarry owners and for negotiating the contract for working the quarry. The so-called lease is in these words:

F "With reference to your letter of October 23, 1975 and in consideration of the sum of \$6,909 received in cash, the Company undertake to grant you a sublease for a period of 10 years on terms as outlined in our Agreement of October 9, 1975 as soon as the title (over land approved vide (9)dlm. KT55-2 Sj 1/6 dated April 14, 1975) is issued.

Sgd. ?

Tandatangan Pemuhun
(Managing Director
Paramount Limestone Sdn. Bhd.)

H Tarikh: December 9, 1975

To: Managing Director,
Nader Minerals Development Sdn. Bhd.,
Ipoh."

I At the hearing before me, I asked to see the original. It was produced, as stapled. The paper had clearly been excised from another piece of paper. It bore a signature, that apparently of Miss Patricia Loh if a comparison is made with her signature on the agreement. It bore the date of December 9, 1975 and it referred to the respondents' letter of October 23, 1975 and to the receipt of a sum of \$6,909. The terms were said to be as outlined in the agreement.

No explanation was offered for the curious excision or the consideration. If reference is made to all

alleged payments made previously, no relation can be seen to equate the sum of \$6,909 with any such allegations. The agreement did not spell out any terms. On the other hand, it specifically spelt out that the terms and conditions were to be negotiated. The letter of October 23, 1975, which is now reproduced

"23rd October, 1975.

Syarikat Paramount Limestone Sdn. Bhd.,
8, Ceylon Avenue,
Off Jalan Abdul Jalil,
Ipoh.

Sirs,

Re: Agreement dated 9.10.1975

We refer to your Consultant's Drawing No. NC105/75 and wish to inform you that our proposals to blast the southern quarry faces have been thwarted by the mine operators of SG 6062 (Lot 67887) and therefore we are forced to restrict quarry operations to the northern faces.

It appears that before we can commence blasting operations on the northern faces we have to comply with conditions h2 and h3 of the approval letter KT 55-2 SJ 1/6 dated April 18, 1975. This means that your Consultant has to submit proposals to deviate (and or restore Sg. Anak Air Tonggang) and to construct metalled access roads to the crusher plant. Kindly instruct your Consultant to commence work on these proposals as soon as possible. We undertake to advance his fees and charges.

Yours faithfully,
Sgd. ?
(Secretary)

NADER MINERALS DEVELOPMENT
SDN. BERHAD.

c.c Nader Consultants."

did not request any lease or any undertaking to grant a lease, and the question must obviously be asked, why, if there was such an agreement to grant a lease, the respondents had not previously referred to it or used it to lodge a caveat since clearly an agreement to grant a lease is a registrable interest within the meaning of section 323 of the National Land Code.

Miss Patricia Loh in an affidavit averred that it was a forgery and gave reasons why it was a forgery. Suffice it to say, the reasons were not conclusive and no confidence could be placed on her reasoning since for some reasons not clear to me, she had failed to ask for inspection of the document. I do not understand how she could claim that the signature was not hers but only photostated on the document, when she had not seen it.

The document, if it is an agreement to grant a lease, is clearly one that requires to be stamped under the Stamp Ordinance. The fact is, it is not stamped. Learned counsel for the applicants did not object to its introduction in evidence, as he was obviously entitled to do, since even if it was insufficiently stamped despite Rule 4 of the Rules and Etiquette under the Advocates and Solicitors Ordinance, 1947, it went to the root of the matter.

Having regard to the failure to stamp the document, I impounded it under section 51 of the Stamp Ordinance and ruled under section 52 of the said Ordinance against its admissibility in evidence.

The matter must now be decided on whether the two caveats should be allowed to stand on the grounds advanced.

Section 323(1) of the National Land Code insofar as it is relevant to these proceedings reads:

"323(1). The persons and bodies at whose instance a private caveat may be entered are —

(a) any person or body claiming title to or any registrable interest in, any alienated land or any right to such title or interest."

On the evidence before me, the right of the respondents sprang from the agreement of October 9, 1975, which had not been extended. Even if it had not been determined effectively by valid notice on March 1, 1976, it had now been determined by effluxion of time. The respondents can have no title or registrable interest to the land under such an expired agreement.

If as the respondents claimed they had advanced money to the applicants or any of their agents, or if they had expended money on the land but were frustrated from working the quarry by any default on the part of the applicants, they might have a claim against them, as the respondents themselves must be regarded as having tacitly admitted by filing the Civil Suit No. 210/77, but their claim, not being a title to or any registrable interest in the land, cannot be protected by any caveat.

An order therefore is made for the removal of the caveat lodged on June 9, 1977 in terms of the first prayer (a). No order needs to be issued in respect of the third prayer (c), since under section 327(2), the Registrar will remove the caveat on being served with the order I have just made. As for the second prayer (b) that the respondents be precluded from registering further caveats against the said piece of land, no order in terms is clearly possible. However under section 329(2), the Registrar shall not entertain any application for the entry of a further caveat if it is based on the like claim as that on which the former one was based. The respondents will pay the costs of this application.

Order accordingly.

Solicitors: *Lewis & Co.; Mahendran & Co.*

SIN CHEOK CHOONG v. PUBLIC PROSECUTOR

[A.Cr.J. (Harun J.) December 24, 1977]

[Kuala Lumpur — Federal Territory Criminal Appeal
No. 28 of 1977]

Criminal Law and Procedure — Drug-trafficking — Appellant found filling drugs into a plastic tube — Conviction — Appeal — Dangerous Drugs Ordinance, 1952, s. 39B(1)(c).

Dangerous drugs — Trafficking — Heroin and morphine — Appellant found filling drugs into a plastic tube — Dangerous Drugs Ordinance, 1952, s. 39B(1)(c).

The police raided the premises at No. 12A Jalan Sarawak, Kuala Lumpur and found the appellant filling drugs into a plastic tube. On seeing the police, the appellant tried to escape by jumping from the first floor. In the room the police recovered 18 plastic packets and 72 plastic tubes containing 55.37 gms of heroin and 8.58 gms of morphine and 249 empty plastic tubes. The room was rented by one Ah Kee. In his defence the appellant claimed that he was a drug addict and had gone on that day to see Ah Kee to buy drugs. Ah Kee